

**APPLICANT:**  
Ashley, Inc.

**REQUEST:** Modification of prior Board of Appeals approvals to permit the construction of 3 structure, revise parking areas and increase patient beds from 85 to 100

**HEARING DATE:** February 6, 2013

**BEFORE THE**

**ZONING HEARING EXAMINER**

**FOR HARFORD COUNTY**

**BOARD OF APPEALS**

**Case No. 5793**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Ashley, Inc.

**LOCATION:** 800 Tydings Lane, Havre de Grace  
Tax Map: 59 / Grid: E1-F1 / Parcel: 155  
Sixth (6th) Election District

**ZONING:** AG / Agricultural District

**REQUEST:** A request for modification of a prior approved special exception to permit the construction of 3 structures; to revise parking areas and internal sidewalks; and to increase the total number of patient beds from 85 to 100 in the Agricultural District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

Ashley, Inc. is a substance abuse treatment center located on approximately 150 acres north of Havre de Grace along the Chesapeake Bay. The center opened in 1983 and is currently permitted for 85 beds for inpatient treatment and care.

Over the years the Applicant has requested a series of modifications to its original zoning approval as granted in Case No. 2800 in 1981. As a result subsequent zoning decisions have allowed an increase in the number of patient beds, and the construction of additional administrative and inpatient care facilities.

The Applicant now comes before the Board requesting another modification of its original special exception approval to increase the number of patient beds from 85 to 100, to allow the construction of 3 structures on-site – a rebuilt guard house, a water treatment facility, and a new patient intake facility - and to revise its previously approved site plan.

## **Case No 5793 - Ashley, Inc.**

For the Applicant first testified Fr. Mark Hushen who identified himself as the Chief Operating Officer of Ashley, Inc. Fr. Hushen explained that Ashley is currently licensed for 85 patients, and has approximately 115 full-time employees. In 1983 the treatment facility was first established. It is now a world class organization known throughout the Country and world.

Originally 43 acres was purchased and utilized by Ashley, Inc. Since that time additional acreage has been purchased so that the present holdings total about 150 acres. The adjoining parcel, formerly utilized as the Swan Creek Country Club, was purchased in 2008 for the purposes of providing a better buffer and increased privacy. This parcel also would allow room for further expansion, although no portion of the new parcel is part of the proposed expansion. The present plan for expansion was first considered in 2008.

Fr. Hushen described plans for expansion as including the addition of a new building for an admissions center and pretreatment facility. Thirty-six beds will also be located in this new building. Some existing beds will, accordingly, be eliminated. The Applicant desires to have no more than 2 patients in a room and the new patient rooms will allow this to be accomplished.

Fr. Hushen feels there is a great need for the type of treatment which is offered by Father Martin's Ashley.

The Applicant will be required to obtain a Certificate of Need from the State of Maryland-for the additional beds.

The additional patients would require the Applicant to hire 6 to 10 new employees. The cost would be about \$18,000,000.00. Most traffic occurs on the site at employee shift change, which is from 7:00 - 9:00 a.m. and from 3:00 p.m. to 5:00 p.m. Generally speaking, there will be no fundamental change in the operation of the facility. Patients usually arrive by car.

Fr. Hushen explained the Applicant tries to be a good neighbor and tries to keep the community informed of its operations and changes. About 25 neighbors attended an informational meeting which was held concerning the project.

Fr. Hushen on behalf of the Applicant agreed to all conditions recommended by the Harford County Department of Planning and Zoning.

Next for the Applicant testified Fritz Behlen, a registered landscape architect with Site Resources, Inc. Mr. Behlen was offered and accepted as an expert landscape architect and land planner.

Mr. Behlen explained that there has been a slight revision of the site plan as originally submitted which was done for the purpose of keeping the septic reserve area out of the expanded critical area shown on the southeast corner of the site plan.

## **Case No 5793 - Ashley, Inc.**

Mr. Behlen stated that, in his opinion, the submitted plan meets all Harford County Development Regulations. He does not believe that the proposal will have an adverse impact on any surrounding properties. It will have no impact on Chesapeake Bay Critical Areas. The closest residence to the location of the new admissions building is about 1,500 feet away. The proposed physical expansion will not result in any significant change in traffic or operation of the facility.

Mr. Behlen anticipates no adverse environmental impact. In fact, said Mr. Behlen, the proposal will be environmentally beneficial as a pre-treatment system will be constructed to treat wastewater before it is discharged into drain fields which, in turn, will drain into the Chesapeake Bay. State of Maryland regulations require such pre-treatment systems. Water from all buildings will discharge into pre-treatment facilities.

Furthermore, run-off from the old Swan Creek Golf Course has been reduced because vegetative cover has been allowed to more fully develop.

Next for the Applicant testified John Conwell, Senior Project Manager of Site Resources, Inc. Mr. Conwell stated that a 10% improvement in water quality is a requirement of the State of Maryland Critical Area Commission, as stated in its letter of December 27, 2012. This will be accomplished by the planned storm water management facilities to be installed onsite.

Basically, his firm will undertake to design facilities which will result in at least a 10% improvement in the quality of water which reaches the Bay.

Next testified Anthony McClune, Deputy Director for the Harford County Department of Planning and Zoning. Mr. McClune stated that the Ashley operation is considered a Nursing Home under Harford County Development Regulations.

The Department has no objection to the proposed expansion. Mr. McClune and the Department see no impact on the surrounding properties or neighbors beyond the present impact. The Department has recommended certain conditions which the Applicant has agreed to accept.

In opposition testified Mr. Griffith Davis of 415 Oakington Road. Mr. Davis is concerned that sewage is not adequately disposed of. He feels that Ashley is a commercial operation and is opposed to any expansion of this commercial use.

The file contains a letter from the State of Maryland Critical Area Commission which notes that no critical area issues are involved, although the letter does contain a series of recommendations and conditions of approval.

A letter was received subsequent to the hearing from Alan Sweatman, M.D. of 826 Country Club Road, Havre de Grace, Maryland, which stated he was unable to attend the hearing but had concerns about the location of the septic reserve areas and impervious surface coverage.

## **Case No 5793 - Ashley, Inc.**

No further evidence or testimony was presented.

### **APPLICABLE LAW:**

Section 267-87B and C of the Harford County Code states:

- "B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board Approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board Approval."*

Section 267-9I, Limitations, Guides and Standards, is also applicable to this request and will be discussed in more detail below.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

For over 30 years Ashley has been providing residential substance abuse treatment. It has been located for that entire period of time on a 44 acre tract along the Chesapeake Bay which is, in fact, one of the very few privately owned Bay front properties within Harford County. Recently Ashley has purchased what was known as the Swan Creek Country Club property which increased the size of Ashley's holdings by about 100 acres. There are no plans to use the newly purchased parcel at the present time and it serves as open space and buffer, used by local residents for recreational purposes.

A series of modifications of Ashley's original permit have allowed it to gradually increase its size from its initially permitted 50 bed to its present 85 bed capacity. At least two new buildings have also been approved and built over those years. The record discloses no issues raised by the Department of Planning and Zoning over those years, nor was any complaint raised during the hearing about past Ashley activities.

Ashley now comes before the Board seeking permission to modify, once again, its initial zoning approval to allow an expansion and modernization of its operations. It asks to increase the number of allowable beds from 85 to 100 which would necessitate eliminating certain existing rooms and creating new patient rooms in a new facility. Ashley's purpose is to not only increase the number of beds but also to have no more than two patients in a room, which is the preferable model. Furthermore, Ashley wishes to construct a water treatment facility and re-build its guard house as well as revise parking areas and internal sidewalks. The new patient rooms will be built in a new patient intake facility which will also contain additional room for patient amenities.

## **Case No 5793 - Ashley, Inc.**

While of course there will be some change to the physical plant of Ashley by the new buildings, none of these facilities will extend beyond its original 44 acre parcel and none should have any particular impact on the surrounding neighbors. While overall patient population will increase by up to 15, and the number of employees will increase by 6 to 10, no other impact was expected by Ashley. No doubt additional visitors would come to the site and perhaps some additional delivery and emergency vehicle activity would be created as a result of the increase in population. Nevertheless, these impacts will be minor and certainly entirely consistent with what appears to be a low key and non-intrusive atmosphere.

The Applicant will be required to meet all State and Federal regulations for treatment of wastewater. In fact, one of the proposed structures is a new wastewater pretreatment facility which will be required by recently enacted State regulations. The State of Maryland Critical Area Commission has approved the requested changes as the site is located in a Limited Development Area. The Critical Area Commission has, however, recommended a series of conditions of approval.

While a neighbor expressed concerns about impact from sewage disposal, in fact there were no specific challenges raised to the proposed septic disposal system, nor does either the Critical Area Commission or the Harford County Department of Planning and Zoning raise any issues concerning sewage disposal. Indeed, newly revised State Regulations should provide protection against drain field impact on neighboring properties and to ground water. In any event, no evidence was given to support these concerns.

Based upon the evidence of record, little or no adverse impact to adjoining properties or residents can be found. However, application of the Limitations, Guides and Standards, Section 267-9I is nevertheless applicable and is addressed as follows:

- (1) *The number of persons living or working in the immediate area.*

There will be a slight increase of employees on-site and, of course, an increase of up to 15 patients and their visitors. This increase will no doubt result in at least a few extra vehicular trips in and out of the parcel each day which, in and of itself, should have no perceptible impact on the surrounding community.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Low levels of traffic now generated by the facility have had no impact on the neighborhood in the past, at least no impact which was articulated during the hearing. It is difficult to imagine the very few increased vehicle trips which will be caused by the expansion would have a greater impact.

**Case No 5793 - Ashley, Inc.**

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There should be no impact on the growth of the neighborhood and community or fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such characteristics have been identified.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Facilities for water and sewage disposal will be provided onsite and it is found that they will be adequate for the proposed facility with no impact on the watershed. Public police protection is provided by the Harford County Sheriff's Office. Trash disposal is to be provided by Ashley as in the past.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

It is found that the proposal is consistent with generally accepted engineering and planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed expansion is in compliance with these plans and studies.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The Chesapeake Bay is a sensitive environmental feature. This project, however, has been well designed to mitigate, to the extent mandated by State of Maryland Regulations, any impact on the Chesapeake Bay.

**Case No 5793 - Ashley, Inc.**

(10) *The preservation of cultural and historic landmarks.*

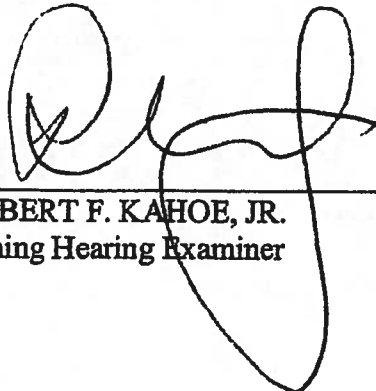
No such landmarks have been identified.

**CONCLUSION:**

It is, accordingly, recommended that the requested modification of special exception be approved subject to the following:

1. The Applicant shall submit a Site Plan for review and approval through the Development Advisory Committee (DAC).
2. The Applicant shall submit detailed landscaping and lighting plans for review and approval at the time of Site Plan submission.
3. The Applicant shall comply with the requirements outlined in the Critical Area Commission's letter dated December 27, 2012 in addition to all other applicable requirements for development within the Critical Area.
4. The Applicant shall obtain all applicable permits and inspections for the new construction; including permits from the Harford County Health Department and/or Maryland Department of the Environment (MDE) for the construction of the wastewater pre-treatment facility.
5. The Applicant shall obtain approval from the Health Department for the increase from 85 to 100 beds.

Date: March 28, 2013

  
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ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on April 25, 2013.**